

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Dkt. No. 94-29
Table of Allotments,)	RM-8416
FM Broadcast Stations.)	
)	
Willows and Dunnigan, California)	
To: Acting Chief, Allocations Branch		

**JOINT COMMENTS OF
GENESIS BROADCASTING, INC.
AND TRIBUNE BROADCASTING CO.**

Genesis Broadcasting, Inc. ("Genesis"), licensee of Stations KSFM(FM), Woodland, California, and KSMJ(AM), Sacramento, California, and Tribune Broadcasting Co. ("Tribune"), licensee of Stations KYMX(FM) and KCTC(AM), Sacramento, California, hereby submit joint comments on the Notice of Proposed Rule Making ("NPRM") released April 15, 1994, in the above-referenced proceeding. The NPRM was adopted in response to a petition for rule making filed by KIQS, Inc., licensee of KIQS-FM, Willows, California (the "petitioner"), and proposes the following actions: 1) substitution of Channel 288B1 for Channel 288A at Willows; 2) reallocation of Channel 288B1 from Willows to Dunnigan, California; and 3) modification of the license for Station KIQS-FM from Willows to Dunnigan. As discussed in detail herein, Genesis and Tribune submit that the proposed removal of the sole nighttime voice from a small rural community to the Sacramento market would disserve the public interest,

No. of Copies rec'd _____
List A B C D E

and, therefore, the Allocations Branch staff should reject the petitioner's proposals.

The Commission's allocations priorities applicable for FM stations are (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, n.8 (1989) ("Modification Order"), recon. granted in part, 5 FCC Rcd 7094 (1990).

Neither of the first two allotment priorities are implicated in the instant case. With respect to the third priority, the petitioner claims that, through the proposed reallocation, the "community" of Dunnigan would stand to gain its first local service. Contrary to the petitioner's assertions, however, Dunnigan's status as a "community" for allotment purposes is far from "indisputable." See Petition for Rule Making, at 3. Indeed, the petition itself demonstrates that Dunnigan is no more than an I-5 way station in the outreaches of the Sacramento market which falls well short of possessing the requisite attributes of a community.

Dunnigan, located in the Sacramento MSA approximately 35 miles from downtown Sacramento and less than 20 miles from Woodland, is a "small residential enclave surrounded by agriculture, with highway commercial service businesses that

cater primarily to Interstate 5 travelers." See Petition, Exhibit B, page II-2. Dunnigan is not incorporated and has no listing in the U.S. Census. The petition states that it has a population of "approximately 700 residents," although the Dunnigan General Plan attached at Exhibit B to the petition lists the population as 495. Id.

The General Plan indicates that Dunnigan "is a good location for highway-related services," id. at II-5, but otherwise characterizes Dunnigan as a place of extremely limited growth potential and, indeed, as a place where residential development would be inappropriate.

Dunnigan's location makes it inappropriate for major residential development. Dunnigan has no school. It does not have sewer or water facilities. Because it is far from large job centers, new residents would likely commute to Woodland or Sacramento. Significant new residential development is, therefore, not appropriate here.

Id. The Plan notes that a de facto moratorium has been imposed on development in the Old Town area of Dunnigan due to health-threatening levels of nitrates in the drinking water. Id. at II-6. It goes on to state that Dunnigan "lacks the necessary urban services (e.g. schools, sewer, water service, library, entertainment, basic personal services) to serve as a bedroom community." Id. at II-27.

Many of the public services in Dunnigan are provided by Yolo County, including police protection (through the Sheriff's Department), planning, building inspection, solid

waste disposal, and road and street maintenance. Id. at II-35, 37. There are no schools in Dunnigan; children from the area are bussed to public schools in Arbuckle, about ten miles north in Colusa County. Id. There are no medical or health care services available in Dunnigan, and no parks in the area. Id. at 37.

In short, the petition itself demonstrates that Dunnigan is wholly lacking in the characteristic indicia of community status, and is an inappropriate substitute for the well-established rural community of Willow. While the Commission in the past has found localities to be communities for allotment purposes despite the absence of certain traditional indicia, Dunnigan, an area lacking in virtually all of the pertinent characteristics, should not be so recognized. Allotment of a Class B facility to Dunnigan would in fact be an allotment to the already well-served Sacramento market.

Moreover, even assuming that Dunnigan could be characterized as a community for allotment purposes, the proposed reallocation from Willows to Dunnigan would not result in a "net service benefit for the affected communities." Modification Order, 4 FCC Rcd at 4874. Reallocation to Dunnigan would cause the substantially larger community of Willows (population 4,700) to lose its first and only nighttime local service, leaving it with just a 250-watt daytime AM station, KIQS(AM). In addition, given the state

of the AM market in general and the numerous AM daytime stations which have gone dark in recent years, the continued viability of that facility is open to serious question. Accordingly, the proposed reallocation to Dunnigan could in fact deprive Willows of its only local aural service, a result that plainly would not serve the public interest.

Under these circumstances, Genesis and Tribune submit that the Commission's fourth allotment priority -- the public interest element -- mandates rejection of the petitioner's proposal. As noted above, that proposal ultimately constitutes an effort to relocate the petitioner's service from Willows, a distinctly rural farming community, to Dunnigan, a suburban outpost of Sacramento. In this context, it is not surprising that reallocation would yield an overall increase in areas and populations served, since the proposal effects a move into the well-served Sacramento market. This move, however, would come at the expense of existing service, and therefore is contrary to the public interest.

The petitioner suggests that the proposed loss of Willow's only FM station and its sole local nighttime service would be mitigated by the availability of a vacant Class A channel. Contrary to the petitioner's claims, however, it does not appear that any other Class A channel could readily fill the gap left in Willows. As the attached engineering materials indicate, the petitioner's contention (at Page 2,

Exhibit E-1 of the petition) that Channel 272A could be allotted to Willows is inaccurate -- Channel 272A can not be allotted in the Willows area. In addition, the proposed allotment of Channel 292A to Willows may not be acceptable under the Commission's rules because a properly-spaced station would fail to place the requisite predicted 70 dBu contour over the entire community of license. 47 C.F.R. § 73.315(a); Creswell, Oregon, 67 RR 2d 56 (1989).¹ Thus, grant of the proposed reallocation could result in a permanent loss of existing service to KIQS-FM's current listeners. Yet, even if a new channel were in fact allotted to Willows and a new station constructed, it could be years before the loss of existing service would be remedied.

As the Commission has stated

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocation of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.

Modification Order, 5 FCC Rcd at 7097. In the instant case, there simply are no palpable public interest benefits in the

¹ As the engineering exhibit indicates, based on 1990 Census maps, it does not appear that a new station could be located in compliance with spacing requirements and place a 70 dBu contour over all of Willows.

proposed reallocation to offset the public's expectation of continued service at Willows.

Indeed, in similar factual contexts, the Commission has deemed the loss of existing service to be an unacceptable result and denied requests for reallocation. In Ravenswood and Williamstown, West Virginia, 7 FCC Rcd 5116, 5118 (1992), for example, the Commission rejected a request to reallocate service "from the relatively isolated community of Ravenswood to a community [Williamstown] approximately half its size when the action would cause a loss of reception service" to a substantial population. The proposed reallocation to the more suburban Williamstown was denied even though it would have resulted in an overall increase in population served, provided Williamstown its first local aural transmission service, and left Ravenswood with an AM station and a vacant FM channel. The Commission noted there that

[w]hile our allocation priorities generally favor proposals that would provide a first local transmission service to a community, we are willing to apply the allocation criteria flexibly, where warranted. We believe that flexible application is appropriate in situations that would result in the loss of reception to an area when, as here, there are minimal countervailing public interest benefits.

Id.

The Commission reached a similar conclusion in Eatonton and Sandy Springs, Georgia, 6 FCC Rcd 6580, 6586 (1991), rejecting a proposed reallocation on the grounds that "a

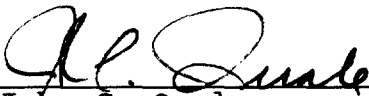
substantial population, with a legitimate expectation of continued service, would suddenly find that they no longer have access to 'the signal of an operating station that can be accessed today simply by turning on a ... radio set.'" The Commission went on to note that the population at issue would not even be offered "the 'poor substitute' of a vacant allotment capable of providing service at some future date." Id. at 6587. Thus, a similar result is merited here, where the loss of existing service is neither justified nor readily remedied by the "poor substitute" of a replacement channel capable of filling the void.

Conclusion

In conclusion, Genesis and Tribune submit that the petitioner's proposals are wholly lacking in merit and should be rejected. Dunnigan is not a "community" for allotment purposes, and is plainly undeserving of a Class B facility. Moreover, sacrificing Willows' only local nighttime service - - and potentially its only local aural service -- in favor of additional service to Sacramento and Woodland would be patently inconsistent with the public interest. In short, the proposed reallocation from Willows to Dunnigan would not result in a "net service benefit for the affected communities." Modification Order, 4 FCC Rcd at 4874. Accordingly, the proposed substitution of Channel 288B1 for

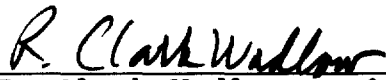
Channel 288A and reallocation of Channel 288B1 from Willows to
Dunnigan should be rejected.

Respectfully submitted,
GENESIS BROADCASTING, INC.

By: 
John C. Quale
Jerry V. Haines
Kenneth D. Ebanks
of
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

TRIBUNE BROADCASTING CO.

By: 
R. Clark Wadlow *pm 9:22*
of
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8215

Its Attorney

June 6, 1994

**ENGINEERING STATEMENT
IN SUPPORT OF OPPOSITION TO THE
PROPOSAL CONTAINED IN MM DOCKET 94-29
TO AMEND FM ASSIGNMENT IN SECTION 73.202
OF THE FCC RULES
(WILLOWS AND DUNNIGAN, CA)
ON BEHALF OF
GENESIS BROADCASTING INC. AND
TRIBUNE BROADCASTING CO.
JUNE 1994**

**COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.**

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington)
) ss
District of Columbia)


Donald G. Everist, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer, a Registered Professional Engineer in the District of Columbia, and is President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005;

That his qualifications are a matter of record in the Federal Communications Commission;

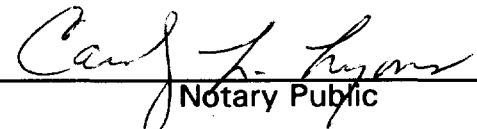
That the attached engineering report was prepared by him or under his supervision and direction and

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.



Donald G. Everist
District of Columbia
Professional Engineer
Registration No. 5714

Subscribed and sworn to before me this 6th day of June, 1994.



Notary Public

My Commission Expires: 2/28/98

This engineering statement has been prepared on behalf of Genesis Broadcasting Inc. and Tribune Broadcasting Co., and is in support of the opposition to the proposal to amend the Table of Assignments, Section 73.202 of the FCC Rules. Specifically, it requested to amend the frequency for Willows, California from Channel 288A to Channel 288B1 and reallocation of Channel 288B1 from Willows to Dunnigan, California.¹

KIQS-FM operates on Channel 288A and is located approximately 3 kilometers east from its community of license. KIQS is licensed to operate with 5.4 kW at an antenna height of 37 meters.² It produces a 60 dBu (1 mV/m) service area which serves the southeast portion of Glenn County. In lieu of its current Channel 288A, KIQS-FM suggests in its engineering statement that Channel 272A or 292A could be assigned to Willows, California. A review of the allocation situation for both frequencies and the results of those studies are provided.

Willows--Channel 272A

A tabulation of the pertinent assignments is contained in Table 1. The table provides the nearest allocation consideration for this area with the actual distances in kilometers and the FCC minimum required separation distance. The site coordinates for KIQS-FM have been used. As revealed by this study, Channel 272 is prohibited

¹MM Docket No. 94-29, Notice of Proposed Rule Making adopted April 4, 1994; released April 15, 1994, RM-8416.

²KIQS-FM has an application (FCC File No. BMLH-931202KH) on file for 6.0 kW at a height of 37 meters.

from being assigned in the area of Willows, California. Figure 1 provides an allocation map.

Willows--Channel 292A

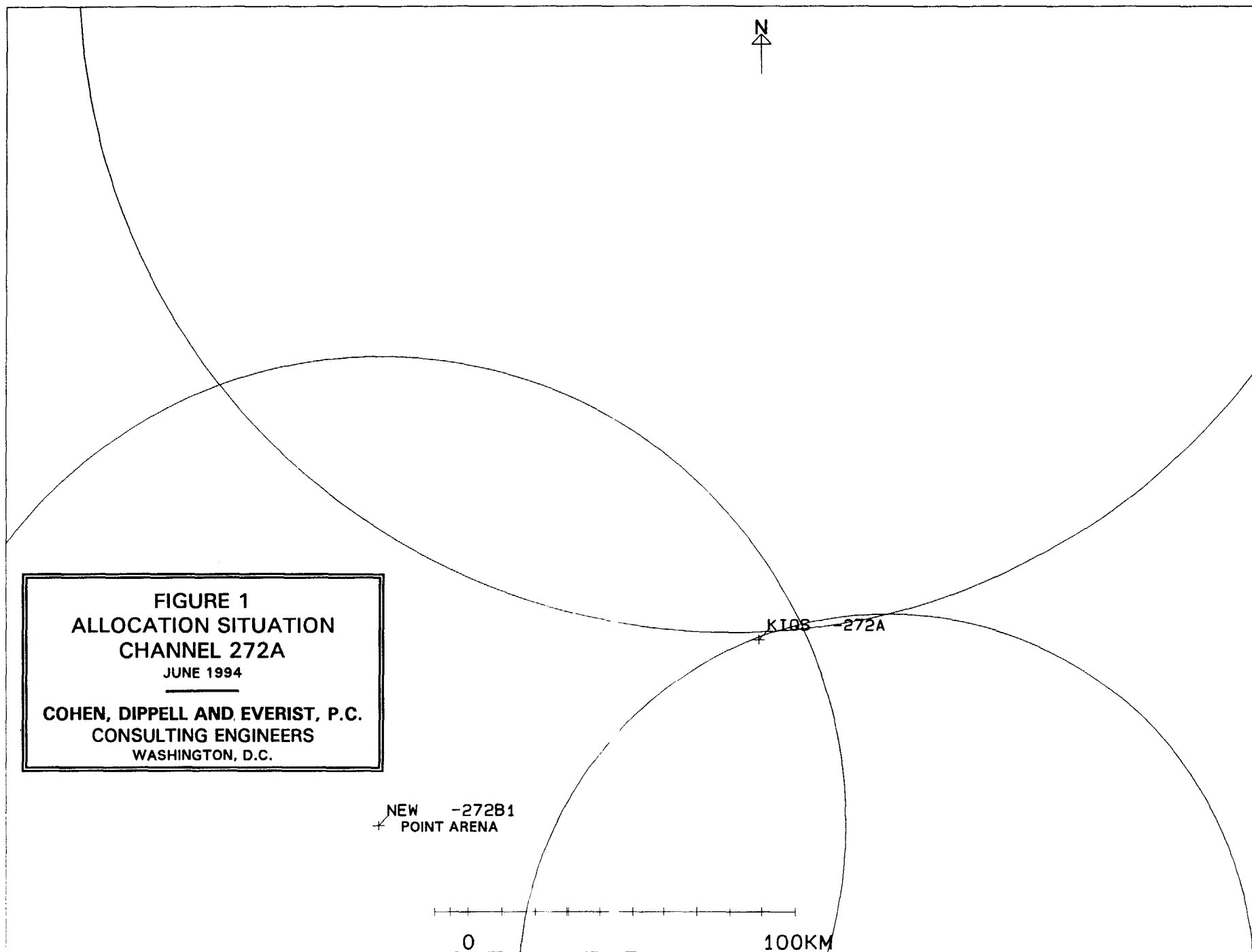
An allocation study has been performed for Channel 292A. Table 2 provides the results of the allocation constraints by identifying the nearest allocation consideration, the distance in kilometers to the nearest pertinent allocation and the FCC minimum required separation in kilometers. Figure 2 provides an allocation map.

The study, Table 3, reveals that while Channel 292A can be assigned approximately 14 km south-southeast, however, it will not serve the same predicted 60 dBu service area as that provided by Station KIQS-FM licensed operation on Channel 288A. Figure 3 provides an allocation map. See attached Figure 4 which provides a coverage comparison between the assumed Channel 292A operation and the current KIQS licensed operation. In addition, based upon the city limits abstracted from 1990 Census publication number 1990 CPH2-6, the predicted 70 dBu contour may not encompass the entire city limits as required by the FCC for a new allotment.

TABLE 1
ALLOCATION SITUATION
FOR THE POTENTIAL CH. 272A OPERATION OF
KIQS-FM, WILLOWS, CALIFORNIA
JUNE 1994

<u>Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
				<u>Actual km</u>	<u>Required km</u>
272A	KIQS-FM	Willows, CA	39 31 44 122 10 09	---	---
218C		None within 49 km			
219C		None within 49 km			
269A	New-App. BPH-940210ME	Los Molinos, CA	39 56 48 121 52 33	52.8	31
270C		None within 115 km			
271C2	PRM	Susanville, CA	40 27 13 120 34 14	170.8	106
271A	KQNC From Ch. 271C2 Per D92-20	Quincy, CA	40 03 36 120 54 46	122.7	72
272B1	New-App. BPH-940223MC	Point Arena, CA	39 01 22 123 31 17	129.5	143*
272C1	KWHO	Weed, CA	41 21 12 122 15 35	202.7	200
272A	KJSN	Modesto, CA	37 40 47 120 55 28	232.1	115
273B	KSFM	Woodland, CA	38 35 20 121 43 30	111.2	113*
274C2	KZAP	Red Bluff, CA	40 15 31 122 05 20	81.3	55
275C		None within 115 km			

*Short-Spaced Station



COHEN, DIPPELL AND EVERIST, P. C.

TABLE 2
ALLOCATION SITUATION
FOR THE POTENTIAL CH. 292A OPERATION OF
KIQS-FM, WILLOWS, CALIFORNIA
JUNE 1994

<u>Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
				<u>Actual km</u>	<u>Required km</u>
292A	KIQS-FM	Willows, CA	39 31 44 122 10 09	---	---
238C		None within 49 km			
239C		None within 49 km			
289C		None within 115 km			
290B	KQPM	Ukiah, CA	39 07 50 123 04 32	89.8	69
291C	KARZ	Burney, CA	40 54 21 121 49 38	155.6	165*
292C		None within 275 km			
293B	KWOD	Sacramento, CA	38 38 30 121 05 25	135.7	113
294B	KDIG	Orland, CA	39 53 17 122 37 38	56.0	69*
295C		None within 115 km			

*Short-Spaced Station

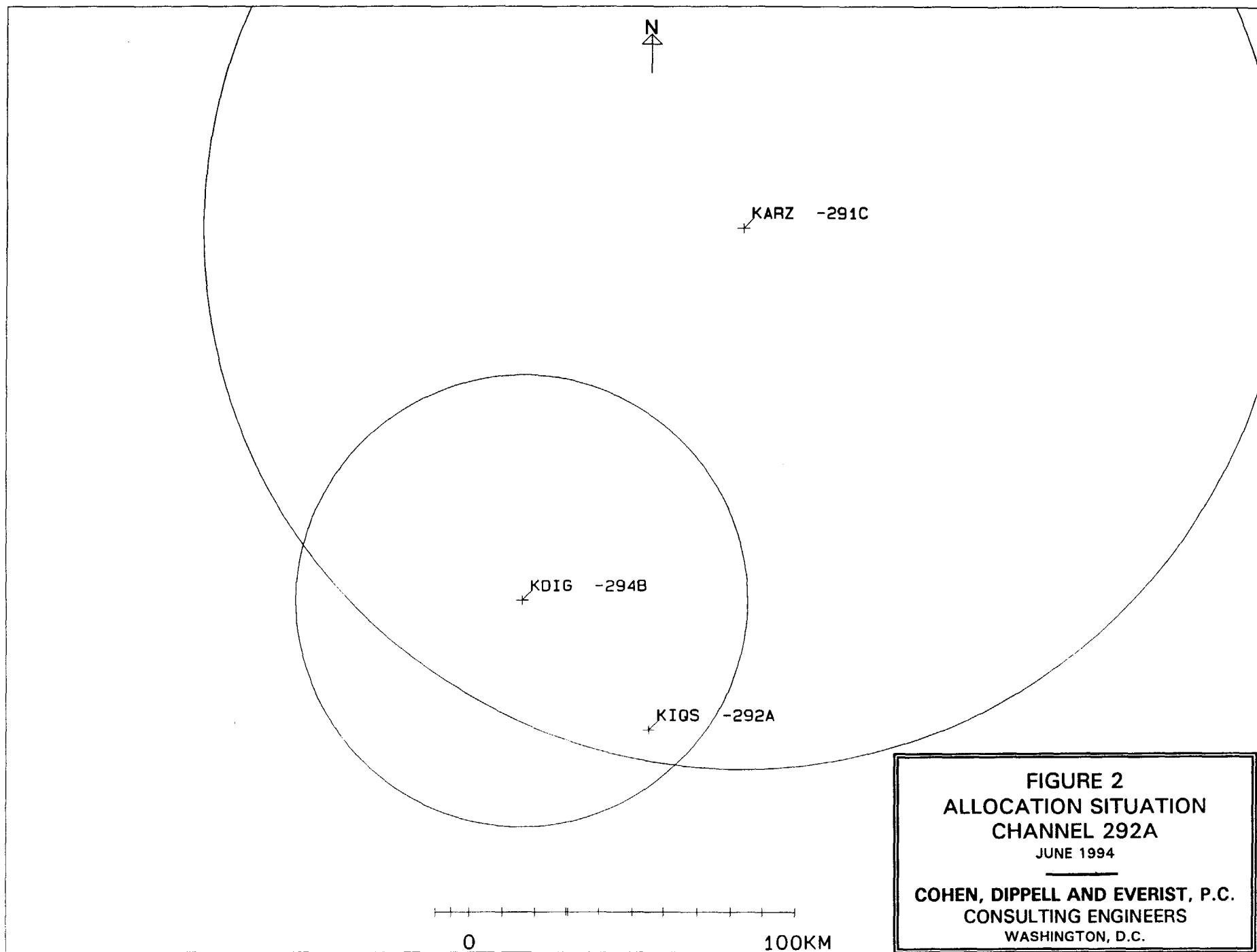
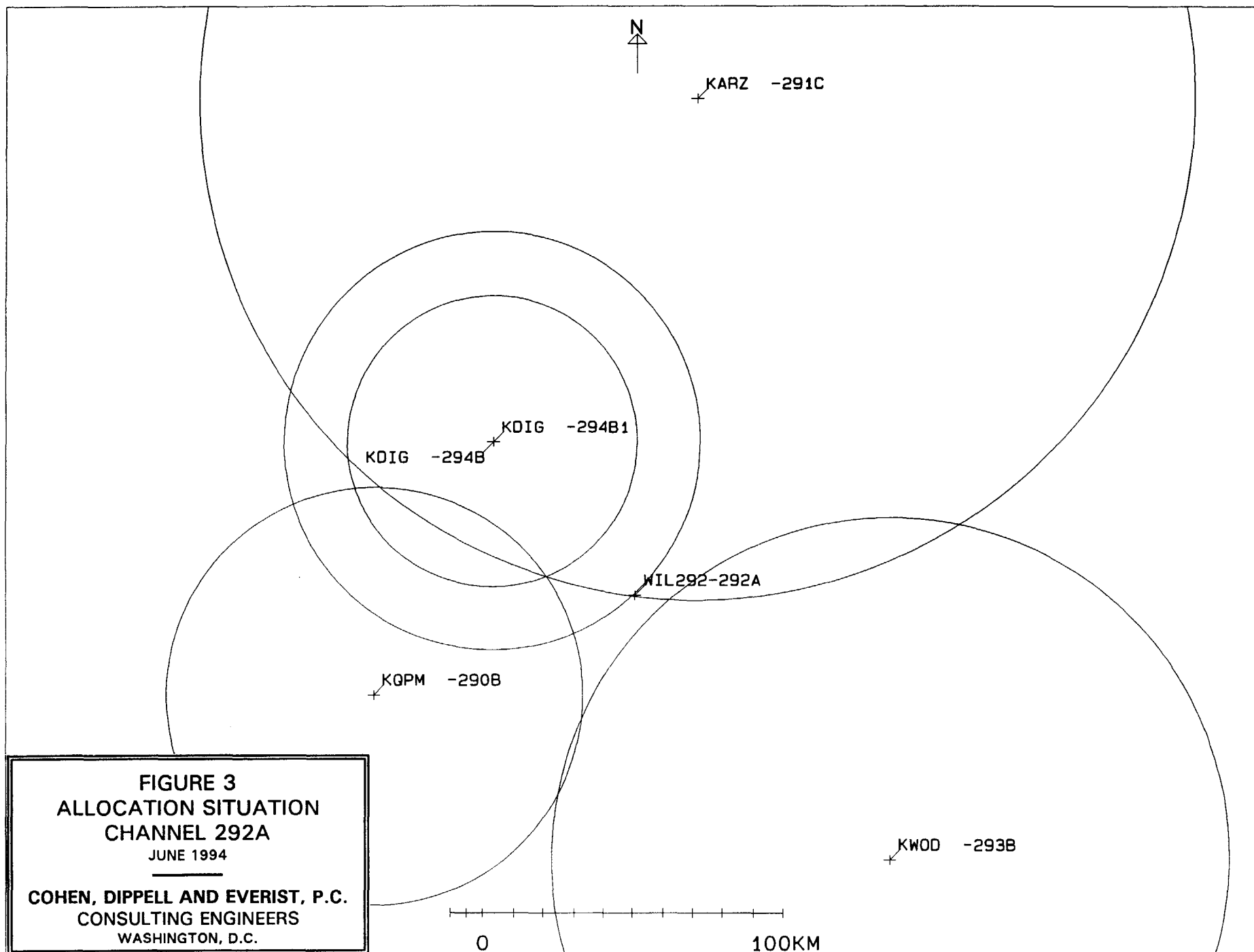
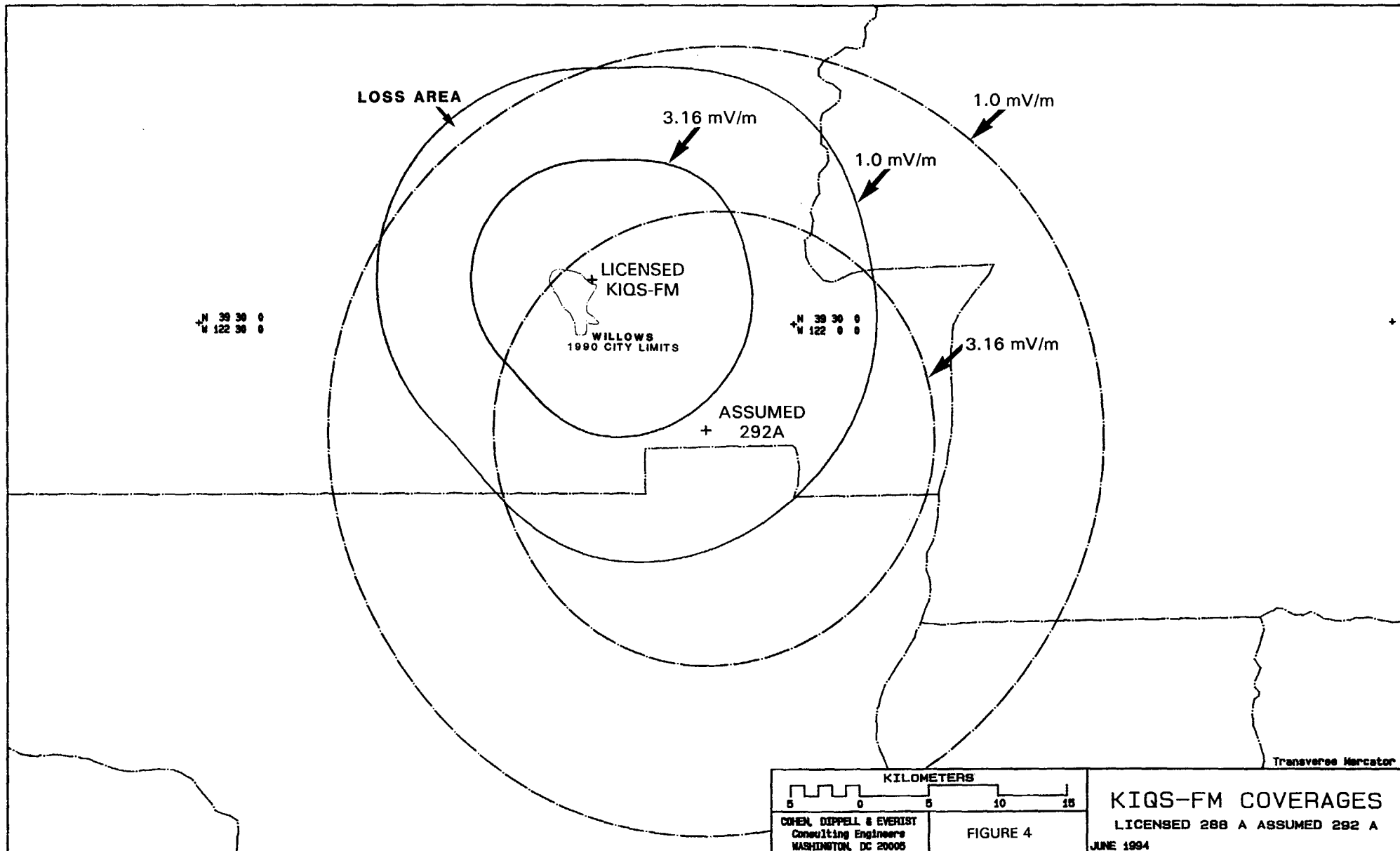


TABLE 3
ALLOCATION SITUATION
FOR THE 6 KW 292A OPERATION OF
KIQS-FM, WILLOWS, CALIFORNIA
JUNE 1994

<u>Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
				<u>Actual</u> km	<u>Required</u> km
292A	KIQS-FM	Willows, CA	39 25 50 122 04 27	---	---
290B	KQPM	Ukiah, CA	39 07 50 123 04 32	92.6	69
291C	KARZ	Burney, CA	40 54 21 121 49 38	165.2	165
293B	KWOD	Sacramento, CA	38 38 30 121 05 25	122.2	113
294B1	KDIG	Orland, CA	39 53 17 122 37 38	69.5	48
294B	KDIG (CP)	Orland, CA	39 53 17 122 37 38	69.5	69





CERTIFICATE OF SERVICE

I, Lori Ramsey, hereby certify that on this 6th day of June, 1994, I have caused to be served by first class mail, postage prepaid, a copy of the foregoing "Joint Comments of Genesis Broadcasting, Inc. and Tribune Broadcasting Co." upon the following party:

Robert Lewis Thompson, Esq.
Pepper & Corazzini
200 Montgomery Building
1776 K Street, N.W.
Washington, D.C. 20006



Lori Ramsey